Datuk Amar James Wong Kim Min & Anor v Pendaftar Pertubuhan

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NO R1–25–137 OF 2002
RAUS SHARIF J
28 APRIL 2004

Administrative Law — Judicial review — Application for — Inspection of documents — Application to inspect documents in judicial review proceedings — Whether application must refer to specific documents — Rules of the High Court 1980 O 24 & O 53 r 6

Civil Procedure — Discovery — Inspection of documents — Application to inspect documents in judicial review proceedings — Whether application must refer to specific documents — Rules of the High Court 1980 O 24 & O 53 r 6

The respondent had cancelled the registration of Parti Kebangsaan Sarawak ('SNAP') on the ground that there was a dispute among the office bearers, causing doubt as to the identity of the same. Pursuant to this decision, the applicants, who were office bearers of SNAP, applied for a *certiorari* order to quash the respondent's decision. Later, the applicants requested the Attorney-General's Chambers to disclose all correspondence pertaining to the appointment and/or election of office bearers of SNAP, whether from the applicants or from any other parties and all memorandum, minutes of meeting, notes, correspondence between the respondent and any party in relation to or in connection with the registration of SNAP. The respondent refused to make the disclosure and claimed that they had furnished all the documents requested by the applicants or in any event, the internal documents of the respondent and the Ministry of Home Affairs were classified as 'secret' and 'confidential'. The applicants then filed this application to the court under O 53 r 6 and O 24 of the Rules of the High Court 1980.

Held, dismissing the application:

(1) On the facts, it was improper to allow the application as discovery was not relevant since the respondent had averred that all documents pertaining to his decision-making process were before the court and there was no evidence adduced by the applicants to show that the materials put before the court were inaccurate or false (see para 12).

(2) In the instant case, the applicants' application for discovery was a fishing expedition because they had failed to be specific as to the documents they were requesting for disclosure (see para 13).

[**Bahasa Malaysia summary**

Responden telah membatalkan pendaftaran Parti Kebangsaan Sarawak ('SNAP') atas alasan kewujudan pertelingkahan di antara pemegang-pemegang jawatan dan ianya menimbulkan kesangsian identiti berkenaan. Berikutan keputusan ini, pemohon-pemohon, yang merupakan pemegang jawatan dalam SNAP, memohon untuk perintah *certiorari* bagi membatalkan keputusan responden. Kemudiannya, pemohon-pemohon menggesa Jabatan Peguam

Negara untuk mendedahkan kesemua surat-surat yang berhubung dengan pelantikan dan/atau pemilihan pemegang-pemegang jawatan di dalam SNAP, sama ada dari pemohon-pemohon atau dari orang lain dan semua memorandum, minit mesyuarat, nota, surat-surat di antara responden dan mana-mana pihak berhubung atau berkait dengan pendaftaran SNAP. Responden tidak mahu membuat pendedahan dan mendakwa bahawa mereka telah memajukan segala dokumen yang diminta oleh pemohon-pemohon atau walau bagaimanapun, dokumen dalaman responden dan Kementerian Dalam Negeri adalah diklasifikasikan sebagai 'rahsia' dan 'sulit'. Pemohon-pemohon kemudiannya memfailkan permohonan ini ke mahkamah di bawah A 53 k 6 dan A 24 Kaedah-Kaedah Mahkamah Tinggi 1980.

Diputuskan, menolak permohonan tersebut:

(1) Berdasarkan fakta kes, adalah tidak wajar untuk membenarkan permohonan penzahiran dokumen kerana ianya tidak relevan oleh sebab responden telah menegaskan bahawa segala dokumen berhubung dengan proses membuat keputusan telah dimajukan ke mahkamah dan tidak terdapat keterangan dikemukakan oleh pemohon-pemohon yang menunjukkan bahan-bahan tersebut adalah tidak betul atau palsu (lihat perenggan 12).

(2) Di dalam kes semasa, permohonan penzahiran dokumen yang dibuat oleh pemohon-pemohon adalah satu ekspedisi memancing kerana mereka gagal untuk menyatakan dengan khusus dokumen mana yang mereka mahu dedahkan (lihat perenggan 13).]

Notes

For cases on inspection of documents, see 2(3) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 2079–2082.
For discovery and inspection of documents, see 1 *Halsbury's Laws of Malaysia* paras [10.3-256]–[10.3-364].

Cases referred to:

McGulgan's Application, Re [1994] NI 143 (refd)
Glor Na Ngael's Application, Re [1991] NI 117 (refd)

Legislation referred to:

Rules of the High Court 1980 O 24, 53 r 6
Societies Act 1966 ss 13(1)(c)(ix), (2), 16(1)
Supreme Court Rules 1977 [UK] O 53 r 8

Khoo Guan Huat (Skrine) for the applicants.
Azizah Hj Nawawi SFC (AG's Chambers) for the respondent.

Raus Sharif J:

[1] This is an application by the applicants for the orders of inspection and discovery of documents pursuant to O 53 r 6 and O 24 of the Rules of the High Court 1980 ('the RHC').

[2] The applicants were, at the material time, the duly-elected President and Secretary-General of Parti Kebangsaan Sarawak ('SNAP') respectively. In a letter dated 5 November 2002, the Registrar of Societies ('the respondent') in exercise of his power under s 13(1)(c)(ix) of the Societies Act 1966 ('the Act') had cancelled the registration of SNAP. The ground for cancellation was that there had been a dispute among the office bearers causing doubt as to the identity of the same.

[3] The applicants have commenced proceedings to apply for an order of certiorari to quash the said decision. Pursuant to the application, the applicants had written a letter to the Attorney-General's Chambers dated 29 May 2003 requesting the disclosure:

(a) all correspondence pertaining to the appointment and/or election of office bearers of SNAP, whether from the applicants or from other parties; and

(b) all memorandum, minutes of meeting, notes, correspondence between the respondent and any party in relation to or in connection with the registration of SNAP.

[4] The respondent however, claimed that:

(a) they had furnished all the documents requested for by the applicants; or

(b) in any event, the internal documents of the respondent and the Ministry of Home Affairs relevant thereto are 'secret' and 'confidential'.

[5] Hence, this application by the applicants.

[6] As stated earlier, the application by the applicants is made pursuant to O 53 r 6 and O 24 of the RHC. Order 53 r 6 reads:

> Within 14 days after leave has been granted, any party to an application for judicial review may apply to the Judge for discovery and inspection of documents pursuant to Order 24 to administer interrogatories pursuant to Order 26, or to cross-examine the deponent of any affidavit filed in support of or in opposition to the application pursuant to Order 38.

[7] It is pointed out by the senior federal counsel that O 53 r 6 of the RHC is similar with the English O 53 r 8 Supreme Court Rules 1977 and the English Court of Appeal in *Re McGulgan's Application* [1994] NI 143, had stated the following principles in dealing with an application for discovery of documents in judicial review proceedings:

> It is clear on the authorities that discovery in judicial review proceedings is different from discovery in an action commenced by writ, and that discovery in judicial review is granted on a more limited basis than in an ordinary action. The reason for the restricted nature of discovery in judicial review was stated as follows by Glidewell LJ in the *Harrison*'s case: What the Judge said was: 'in my judgement the role of the court is different from its role in an ordinary action'. That is correct. It is impeccable. Judicial Review is a different sort of process from the fact finding process which is a necessary part of any action begun by writ and the process of applying the law to the facts. Judicial review notoriously is based upon the way in which a decision has been made, not whether the decision itself was correct …

Just as in the case of cross-examination and of interrogatories, so in the case of discovery the interest of justice requires the protection of both parties to the proceedings. That is why, in judicial review proceedings, the court have consistently stressed that discovery will only be ordered when it is 'necessary'. It will not be granted by way of a fishing license. Otherwise it would become oppressive. These propositions must apply to Ministers and Government Departments no less than to other parties in judicial review proceedings, save that in their case discovery may be further limited by requirements of public interest immunity.

In *R v Secretary of State for the Home Department, ex p Harrison* [1987] CA Transcript 1246 which was an appeal to the Court of Appeal in England in relation to discovery in judicial review Glidewell LJ stated:

'Mr Laws submit that an applicant is not entitled to go behind an affidavit in order to seek to ascertain whether it is correct or not unless there is some material available outside that contained in the affidavit to suggest that in some material respect the affidavit is not accurate. If there is such material it may be right to order discovery to follow that up. But without some *prima facie* case for suggesting that the affidavit is in some respects incorrect, it is improper to allow discovery of documents, the only purpose of which, as I have said, would be to act as a challenge to the accuracy of the affidavit. With that submission also, which is of general application, I agree.'

The English authorities make it clear that where the applicant is unable to point to any material which suggests that the respondent's affidavit is incorrect and insufficient, but wishes to obtain discovery in the hope that the discovery will provide the material to enable him to attack the accuracy or good faith of the affidavit, this is a fishing application and will accordingly be refused.

That the above principles are applicable in cases involving *Wednesbury* Unreasonableness as well as grounds of discrimination and, failure to take relevant considerations and taking irrelevant considerations.

[8] It is also pointed out that the English Court of Appeal in *Re McGulgan*'s case had also stated with approval of the approach taken by Carswell J in *Re Glor Na Ngael's Application* [1991] NI 117. Carswell J has alluded the principles as follows:

(a) There was a distinction between discovery in judicial review and discovery in plenary actions. An order for discovery of documents concerning the issue of unreasonableness in relation to the manner in which a decision had been reached would not be made unless there was material which indicated that the evidence put before the court was inaccurate or false.

(b) Discovery was not required to dispose of the allegation relating to procedural irregularity.

(c) The doctrine of legitimate expectation did not extend to the substance of a decision if his expectation of a favourable decision was disappointed. It was continued to matters of procedure and accordingly discovery was not necessary for disposing fairly of the issue.

(d) Allegations of breach of the rules of natural justice went to the matter of procedure and discovery was not necessary.

[9] As O 53 r 6 of the RHC is similar with that of the English O 53 r 8 English Supreme Court Rules 1977, it is submitted that similar principles as established in the two English cases referred above should be applicable in the present application.

A FINDINGS

[10] In the present case, the application for discovery is premised that 'there are relevant documents that ought to be inspected before the trial of this action'. In the supporting affidavit affirmed by George Anak Jinggot @ Justine Anak Jinggot, the applicant averred in para 3 that the applicants have
B cause to believe that the respondent had:

(a) relied on some written representations made by rebel groups who were then in but has now since left SNAP;

(b) had discussions with this group and/or other officers in the Home Ministry before making the decision dated 5 November 2002.

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[11] The respondent has filed two affidavits. In the first affidavit, the respondent at para 35 averred that he has considered all the letters and documents submitted by the applicants and by Dato' Sri Peter Tinggom before he made his decision under ss 16(1) and 13(2) of the Act. In the second affidavit, at paras 5, 6 and 7, the respondent averred that he had only referred
D to all the documents submitted by both parties to the dispute, namely the documents exhibited as 'IDH – 1A' to 'IDH – 20' annexed to the first affidavit as well as the exhibits referred to by Datuk James Wong affirmed on 25November 2002. Any other internal documents in the office or at the Ministry level would be 'SULIT' or 'RAHSIA'.

E **[12]** It can be seen that the purpose of this application of discovery by the applicants is to show whether the respondent had taken into account irrelevant matters, failed to take into account relevant matters and or acted unreasonably and or an *ultra vires* manner; when he made his decision to deregister SNAP. I am of the view, on the facts of this case, it is improper to allow discovery of documents as sought by the applicants. To me, discovery is not relevant
F because the respondent has averred that all the documents pertaining to his decision making process are before the court and there is no evidence adduced by the applicant to show that the materials put before the court are inaccurate or false.

[13] The learned counsel for the applicants submitted that the respondent
G is obliged at law to produce the internal documents of the respondent and the Ministry of Home Affairs which are relevant even though marked 'SULIT' or 'RAHSIA'. I am unable to agree. To me, the applicants must be specific to the documents they are requesting for disclosure. Otherwise, their application will turn out to be a mere fishing expedition. This court, is not going to issue the applicants the fishing licence.

H **[14]** It is for the abovesaid reasons, the application by the applicants is dismissed with costs.

Application dismissed with costs.

I Reported by I Izzuddin